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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 31

JESS LARSON, AS WAR ASSETS ADMINISTRATOR
AND SURPLUS PROPERTY ADMINISTRATOR,
PETITIONER

VS.

DOMESTIC AND FOREIGN COMMERCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MARCH 3, 1948

CERTIORARI GRANTED APRIL 19, 1948

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9553.

DOMESTIC AND FOREIGN COMMERCE CORPORATION, Mills Building, Washington, D. C., *Appellant*,

v.

ROBERT M. LITTLEJOHN, as War Assets Administrator and Surplus Property Administrator, Railroad Retirement Building, Washington, D. C., *Appellee*.

JOINT APPENDIX.

Appeal from the District Court of the United States for the
District of Columbia.

1. Filed Apr 29 1947 Charles E. Stewart, Clerk.

In the District Court of the United States for the District
of Columbia.

Civil Action No. 1803-47.

DOMESTIC AND FOREIGN COMMERCE CORPORATION, Mills Building, Washington, D. C., *Plaintiff*,

v.

ROBERT M. LITTLEJOHN, as War Assets Administrator and Surplus Property Administrator, Railroad Retirement Building, Washington, D. C., *Defendant*.

Filed May 15 1947

Complaint for an Injunction.

The plaintiff for his complaint herein states to the Court
as follows:

First. The plaintiff is a corporation organized and existing under the laws of Delaware with its principal office in the Mills Building, Washington, D. C., and is engaged in the exporting and importing business, with particular reference to coal.

Second. The defendant is the duly qualified War Assets Administrator and Surplus Property Administrator.

Third. This case arises under Statutes of the United States, the Surplus Property Act of 1944, as amended, and the Uniform Sales Act. The amount in controversy exceeds \$3,000, exclusive of interest and costs.

Fourth. The plaintiff in 1946 entered into two contracts with the War Assets Administration for the purchase of war surplus coal, located in Texas and adjacent states at various Army camps. This coal had been in storage for approximately two years and was purchased at a price of \$1.75 per net ton, F. O. B. cars at location, terms cash on presentation of railroad weight tickets as shipped, with sight draft on plaintiff, being presented to the First National Bank, Dallas, Texas, together with bill of lading to the order of the plaintiff. Upon entering into these contracts the plaintiff applied for special railroad rates to Texas ports which were granted and for special export licenses outside the regular export allocation system of the U. S. government for newly mined coal, which were granted. The coal was sold through the J. P. Routh Coal Company and the Horgan Fuel Corporation as intermediate purchasers, to various foreign governments. These contracts have been fully and successfully performed, although delays of as long as two months in the giving of shipping instructions were necessitated by the obtaining of special export licenses and the obtaining of special railroad rates.

Fifth. On March 11, 1947, the War Assets Administration Regional Office, P. O. Box 6030, Dallas 2, Texas, addressed a letter to the Domestic and Foreign Commerce Corporation offering an additional 10,000 tons of bituminous coal to the plaintiff. This coal was described by them as follows:

"Stove size, mined near Henryetta, Oklahoma; mining company, moisture content, volatile matter, fixed carbon percent, ash percent, B. T. U.'s per pound and ash fusion temperature are unknown. Stored outside on ground in three windows, for approximately three years, adjacent to a switch track of Frisco line.

"This coal is offered F. O. B. cars, Camp Maxey, north of Paris, Texas."

Photostat of the letter is attached hereto as Exhibit A.

On March 13, 1947, Major J. T. Kingsley, President of the Domestic and Foreign Commerce Corporation, wired to Mr. Harry L. Holliday, Regional Director War Assets Administration, Dallas, Texas, and offered to purchase the coal as a continuing part of the former contract. Photostat of this telegram is attached hereto as Exhibit B.

On March 19, 1947, the War Assets Administration Regional Office accepted by letter plaintiff's offer of \$1.75 per ton for approximately 10,000 tons, stating "also your terms of placing \$17,500.00 with the First National Bank, Dallas, Texas, for payment upon presentation of our invoices to said bank are accepted." Photostat of this letter is attached as Exhibit C. This letter also requested that War Assets Administration forms, one being an offer to purchase and one being a sales memorandum, be executed in accordance with the contract made by the exchange of letters and telegrams. These were executed by Major Joseph T. Kingsley as President of plaintiff and mailed to War Assets Administration on March 28, 1947, and photostats of them are hereunto attached as Exhibits D and E.

Plaintiff's covering letter concerning these documents was dated March 28, 1947, and stated that \$5000 was being deposited at the First National Bank in Dallas that day to apply against the first shipment. Letter stated further that the Penn Pocahontas Coal Company would act as exporter for the plaintiff and that the balance of funds necessary to meet War Assets Administration invoices would be

transferred to Dallas immediately when shipment began. It further informed the War Assets Administration that a request had been made for a special freight rate and other steps necessary for the export of this coal had been instituted as in the case of the former contracts. Photostatic copy of this letter is attached hereto as Exhibit F.

4 Sixth. On Tuesday, April 1, 1947, the War Assets Administration wired the plaintiff that

“unless \$17,500 is deposited First National Bank Dallas in payment total quantity of this coal by noon April 4th sale will be cancelled and other disposition made.”

The plaintiff is advised and therefore alleges that it was under no obligation to pay for the coal or make any specific deposits until the presentation of shipping documents. Furthermore it was well known to War Assets Administration that no shipping instructions could be given until the special railroad freight rate had been established and the export license obtained, due to the experience they had gained in the previous contracts. Nevertheless, plaintiff, desiring to comply with any requests made by the government, arranged to have an irrevocable letter of credit in the amount of \$17,500, on the Corn Exchange Bank and Trust Company of New York, payable to War Assets Administration through the First National Bank in Dallas, immediately established by the Penn Pocahontas Coal Company. Plaintiff wired the First National Bank in Dallas on April 4th to notify the War Assets Administration of the establishment of this letter of credit and also wired the War Assets Administration at Dallas on April 4th to the same effect. Photostatic copies of these communications are hereto attached as Exhibits G, H, and I.

Seventh. Nevertheless, on Friday, April 4th, at 9:15 P.M., War Assets Administration Regional Office, Dallas, wired the plaintiff that

“unless \$17,500.00 is deposited with this office or on deposit with the First National Bank of Dallas, Texas, this will

serve as formal notice that sale of 10,000 tons of coal at \$1.75 a ton will be cancelled ten days from this date."

5 This wire was not received by the plaintiff until April 7th. Photostatic copy of the wire appears as Exhibit J. Plaintiff did not understand the reason for this telegram because it had just notified War Assets at Dallas that the letter of credit in the amount of \$17,500 had been established.

Inquiry to the First National Bank in Dallas as to why the letter of credit did not satisfy the War Assets Administration elicited a reply on April 10th that War Assets Administration

"expressed preference for funds to be placed here for payment invoices rather than availability for sight drafts on New York Bank".

See attached photostatic copies as Exhibits K and L.

Eighth. Still endeavoring to comply with the preference of War Assets Administration in all matters, the plaintiff arranged for the amendment of the Corn Exchange Bank letter of credit, dated April 14th, so as to make the draft payable at Dallas. The letter of credit was accordingly amended April 14th and photostats of the original letter of credit and the letter of amendment are attached hereto as Exhibits M and N.

War Assets Administration at Dallas was notified of this amendment making the drafts payable at Dallas by telephone and by letter by the First National Bank of Dallas on April 16, 1947. Photostatic copy of letter is attached as Exhibit O.

Ninth. On April 16, 1947, War Assets Administration's Regional office wired the plaintiff as follows:

"Re sale 10,000 tons coal at \$1.75 ton our credit division has been notified by First National Bank Dallas it does not have sufficient authority to pay for this material upon presentation of invoices. This is formal notification sale is cancelled."

Copy of this telegram is attached as Exhibit P.

6 Tenth. On April 17, 1947, as soon as the wire was received, plaintiff immediately telegraphed as follows:

"We have wire from your Mr. Gray indicating that First National Bank does not have sufficient authority to pay monies against presentation of invoices supported by railroad bills of lading covering our purchase of coal now at Camp Maxey. This coal has been sold to foreign government and port arrangements have been completed for the loading and the First National Bank of Dallas has irrevocable letter of credit from the Corn Exchange Bank and Trust Company, New York City, with full authority to meet your invoices totaling approximately \$17,500.00. We do not understand this action as bonafide letter of credit is established and is usual commercial procedure. We will appreciate your immediate answer and this is to formerly protest cancellation as indicated in your (wire)". (Exhibit Q.)

Eleventh. No reply having been received to this urgent communication, and finding it impossible to reach the Dallas Regional Office on the telephone due to the telephone strike, plaintiff again wired the War Assets Administration at Dallas on April 18, 1947, that it regarded the contract as still in effect. Copy of this wire is attached as Exhibit R. No reply has ever yet been received to either of these telegrams. However, on April 21, 1947, counsel for the plaintiff was able to reach Mr. Frank M. Gray, Chief of the Materials and Supplies Division at Dallas, on the telephone, and was informed by him that he had entered into a new contract selling this coal to the Midland Coal Company of Dallas, Texas.

Twelfth. Plaintiff is advised and therefore alleges that under the terms of the Uniform Sales Act, legal title passed to the Domestic and Foreign Commerce Corporation at the time of the acceptance of its offer by the War Assets Administration's letter of March 19th. Plaintiff further al-

leges that plaintiff is not in default, but has fully complied with all the terms of the contract, and has even gone beyond them in an effort to satisfy defendant's desires.

7 Plaintiff has arranged for an irrevocable letter of credit payable at Dallas, for the full purchase price. Plaintiff was prepared to give shipping instructions within the usual thirty day period allowed exporters by the War Assets Administration. Plaintiff accordingly is advised and alleges that the officers of War Assets are acting illegally in purporting to sell coal to a third party which is the property of plaintiff.

Thirteenth. Plaintiff being advised that it obtained title to the coal at the time of the acceptance of its offer by War Assets Administration on March 19th, immediately entered into negotiation which resulted in its sale to the Penn Pocahontas Coal Company, a company controlled by the same interests as the J. P. Routh Coal Company, at a price of \$2.75 per ton plus 45% of any receipts in excess of \$3.75 per ton on resale by Penn Pocahontas Coal Company. Plaintiff is informed and believes that the Penn Pocahontas Coal Company has resold the coal to an agency of the Portuguese government at a price between \$8.50 and \$9.00 per ton f.o.b. Texas port, which would provide a profit in the neighborhood of \$2.00 per ton for division under the percentage arrangement, after the payment of railroad freight and other expenses.

Fourteenth. Plaintiff alleges that the title to the coal has passed to it and that the War Assets Administration Administrator, through his agents, has purported to enter into a new contract for the sale of this coal, owned by the plaintiff, to another party, to-wit, the Midland Coal Company. Plaintiff is informed and believes that delivery to the Midland Coal Company has not as yet been made. Plaintiff alleges that if the defendant, War Assets Administration Administrator, or his agents, is permitted to make delivery to the Midland Coal Company, the plaintiff will be irreparably damaged in that

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